

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MICHAEL MARCHIONE,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendants.

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C.A. NO.: 14-173M

**DEFENDANT UNITED STATES OF AMERICA'S MOTION TO
SUBSTITUTE THE UNITED STATES FOR RICHMOND J. RAMIREZ, M.D. AND
TRI-TOWN ECONOMIC OPPORTUNITY COMMITTEE**

COMES NOW, the Defendant United States of America, and moves to substitute the United States of America for Defendants, Richmond J. Ramirez, M.D. and Tri-Town Economic Opportunity Committee, with respect to Plaintiff's claim for negligence against Defendants in this case pursuant to 28 U.S.C. § 2679(d)(1), as set forth in the attached Memorandum of Law.

Respectfully submitted,

PETER F. NERONHA
United States Attorney

/s/ Leslie J. Kane
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MICHAEL MARCHIONE,
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UNITED STATES OF AMERICA,
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**DEFENDANT UNITED STATES OF AMERICA'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION TO SUBSTITUTE
THE UNITED STATES FOR RICHMOND J. RAMIREZ, M.D. AND TRI-TOWN
ECONOMIC OPPORTUNITY COMMITTEE**

Pursuant to 28 U.S.C. § 2679(d)(1), Defendant United States of America should be substituted for Defendants, Richmond J. Ramirez, M.D. and Tri-Town Economic Opportunity Committee, as to the tort claim for alleged negligence in Plaintiff's Complaint. The exclusive remedy for personal injuries arising from a negligent or wrongful act or omission of any federal employee acting within the scope of his or her employment, is against the United States, and any civil action against the employee or the employee's estate is precluded. 28 U.S.C. § 2679(b)(1); see also McCloskey v. Mueller, 446 F.3d 262, 266 (1st Cir. 2006) (The United States is the only proper defendant in a claim under the Federal Tort Claims Act). Title 28, U.S.C. § 2679(b)(1), specifically provides for the substitution of the United States in a claim of negligence against an employee of the Government while he was acting within the scope of his employment:

The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of this office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard

to when the act or omission occurred.

Further, 28 U.S.C. § 2679(d)(1) requires the substitution of the United States when the Attorney General, or his designee certifies, that the defendant employee was acting within the scope of his or her employment:

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be as substituted as the party defendant.

On April 4, 2014, Peter F. Neronha, United States Attorney, on behalf of the Attorney General, certified that Defendant Richmond J. Ramirez, M.D., was acting within the scope of his employment at the time of the alleged incident out of which the claim arose. See Certification attached hereto. Thus, the United States of America respectfully requests that it be substituted as the Defendant in place of Richmond J. Ramirez, M.D. and Tri-Town Economic Opportunity Committee with respect to Plaintiff's tort claim against Dr. Ramirez in this case.

Respectfully submitted,

PETER F. NERONHA
United States Attorney

/s/ Leslie J. Kane
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CERTIFICATION OF SERVICE

I hereby certify that on the 8th day of April, 2014, I electronically filed the within Defendant United States of America's Motion to Substitute the United States for Richmond J. Ramirez, M.D. and Tri-Town Economic Opportunity Committee and Supporting Memorandum of Law, with the Clerk of the United States District Court for the District of Rhode Island using the CM/ECF System. The following participant has received notice electronically:

Benjamin K. Lemcke, Esquire
Law Office of Benjamin K. Lemcke
984 Charles Street
North Providence, Rhode Island 02904

/s/ Leslie J. Kane
LESLIE J. KANE
Assistant U.S. Attorney